

Referral Union Rules
Stakeholder Meeting – Lacey
June 7, 2001

Attendees:

Chris Winters, Int'l Union of Painters & Allied Trades
John Morrish, NECA
Ed Taylor, Operating Engineers Local 612
Earl Liss, Operating Engineers Local 612
Jeff Smith, IBEW Local 970
Richard King, IBEW Local 646 et. al
Ed Chilenski, Carpenters Local 1148
John Burnett, Operating Engineers Local 612
Chuck Gotcher, Carpenters Local 360
Ron Forest, Pacific NW Regional Council of Carpenters
Clark Gilman, Carpenters Local 360
Gary Porter, IBEW Local 76
Ed Eixenberger, Boilermakers Local 502
Mark Martinez, Roofer & Waterproofers Local 153
Noel McMurtray, Laborers District Council
Casey Casebier, Painters
Roger Boatwright, Wash. St. Business & Construction Trades Council
Janet Lewis, IBEW Local 46
Grant Alexander, Operating Engineers Local 302
Tom Harris, Sheet Metal Workers Local 66
Joe Harrington, Cement Masons Local 528
Paul Harris, Laborers Local 252
David Bunnell, Carpenters Local 317
Robert Blum, Plumbers & Steamfitters Local 82
Terry Tilton, Rebound/Operating Engineers Local 612
Wayne Herrington, Carpenters Local 1797
Dan Sexton, Wash. St. Assn. of Plumbers & Pipefitters
Mike Grunwald, IBEW #76/Wash. St. Assn. of Electrical Workers

Staff:

Annette Copeland
Howard Nanto
Cheryl Metcalf
Juanita Myers
Judy Johnson
Lori Schneider

The meeting was convened at 9:10 a.m.

Annette: (Opening remarks) Referral union program works well, they have shortest duration on UI compared to other groups. Topic for discussion is availability and work search for members of referral unions. We are not making new law, just clarifying existing law. We are not regulating the union halls or the employer/employer process. We need consistency in decision-making and adjudication process. Looking for their help in determining what should be in rule as it relates to work search and availability for union members.

Juanita: (Reviewed concept paper) Absent contradictory information, we presume the person is able and available. What relevant information could be provided to prove otherwise—court decision leaves it unclear. When cause for doubting is established, go back to claimant. Wouldn't ask anyone to violate hiring hall practices. We would go to individual for info. What was good cause; job must meet definition of suitable work. If not available, denied for 1 week. If refuse suitable work, 7x7 denial. If unreasonable restrictions on availability, denied.

Tom Harris: What is an individual's labor market? Is it defined?

Juanita: Depends on that individual's occupation, distance to work normally traveled by similarly situated individuals in that area. No hard and fast definition.

Wayne Herrington: Can individuals put restrictions on themselves? For example, only willing to drive 10 miles?

Juanita: No; defined by occupation, labor market, etc.

Grant Alexander: Didn't state used to have a minimum distance from home rule? Thinks state used to have something in writing that said you had to travel a specific amount of miles or you'd be denied. For example, anything within 30 miles was in that individual's labor market.

Wayne Herrington: Also thought the department used to have one.

Annette: Doesn't know of one. We'll check and get back to them.

John Morrish: Why is the department requiring a higher level of detail from the employer than it requires of itself in questioning an individual's eligibility for benefits? e.g., Brotherton case.

Annette: Need factfinding to determine where was job, what duties, etc.

Janet Lewis: What is the responsibility of the union referral hall in monitoring the individual claimant? The department only sends the questionnaire for new and reopened claims.

Annette: Unions have responsibility for following guidelines for participation in the union referral program.

Clark Gilman: Who is the employer referenced in concept paper? The one who laid the worker off? Or can any employer question any eligible employee in the trade?

Juanita: Any base period employer and the last employer could challenge the individual's eligibility if sufficient info provided.

Ed Taylor: Thinks the issue is all about employers just not wanting to pay benefits.

Clark Gilman: Need to clarify who has standing to challenge worker's eligibility.

Juanita: Association representing base period employers also found by court to have standing to challenge.

Grant Alexander: If a referral hall doesn't use the base period type of referral, can the employer still challenge the worker's eligibility?

Juanita: When we refer to base period, we mean any employer for whom the individual worked in his/her base year. Any base period employer, and last employer, are interested parties to the decision to pay benefits.

Wayne Herrington: If the employee worked somewhere, and then refused an offer from the employer for more work, is this an issue?

Juanita: Yes.

Mark Martinez: How is standby handled? If someone is working for an employer, and that employer lays them off but says they'll be coming back in a couple weeks, can that individual's eligibility be challenged?

Juanita: Standby policy allows for the individual to request it for up to four weeks. We send a notice to the employer asking them to notify us if they don't want the person on standby. Otherwise, the individual is considered to be attached to the employer and exempt from work search requirements while on standby. If the employer doesn't ask for an extension after four weeks, the claimant will be directed to look for work.

Janet Lewis: Does the union have a duty to monitor the individual's availability for work and report to the department on a regular, ongoing basis?

Juanita: No, but we do expect them to respond if we ask for information about the individual's availability.

Chuck Gotcher: If an employer challenges a claimant's availability, they should have a job to offer.

John Morrish: If a job goes unfilled, or it is taken by a person with less seniority, the individual's availability is in question. A small business may not have another job to offer that person, but they shouldn't have to pay for a person just sitting around drawing benefits. In 1998, his employers paid \$3.3 million in benefit charges. Then started UI cost control program. When a job is unfilled, or filled by Book II, was the person in the hall? Doesn't care if person doesn't want to take that job, but employers should not be charged for that week. They don't challenge partial weeks, and don't challenge Book II referrals without complete information. Does challenge those taking six weeks to go hunting. Everyone knows which people in their unions don't want to look for work.

Dan Sexton: Finds these comments outrageous. As far as employer associations having standing, surely someone in that organization could offer a job before eligibility is questioned. Out of 70 employers, someone must have a job or why are they questioning? There could be a question of skills needed for the unfilled job, or for the job filled by a Book II. Simply saying someone is at the top of a list shouldn't be enough to question their eligibility. The employer should have a job available to match that person's skills before having standing.

Grant Alexander: (to John Morrish) Is there a hiring hall committee between Local 46 and NECA to address these types of issues? Can you negotiate with your union?

John Morrish: No.

Grant Alexander: Looks like one group has moved into the state arena to affect the rest of us.

Annette: Most unions are doing what is required of them and do a great job getting people back to work.

Ed Chilenski: When an employer questions a person's eligibility, if the person is meeting union guidelines and other availability requirements, that should be the end of it.

Grant Alexander: If the department goes back and digs up the distance to work rule, that should resolve it. 60 miles? 50 miles?

John Morrish: Individuals shouldn't violate their union requirements, but they still have to meet ESD rules for UI. Some unions let people turn down jobs for a year (in some case 300-800 jobs) and still meet their requirements.

Chuck Gotcher: It would be a good thing to require the employer to show they have a job. If history of workers not staying there, could show a pattern. Might show problem with the employer, not the workers.

Clark Gilman: Can't think of anything short of a job offer that an employer should provide. This is the lever the employer could have to question eligibility.

Annette: For clarification, does the employer need to also say what type of job, what skill set, etc?

Clark Gilman: Yes.

John Morrish: Point of clarification—is there a difference between providing a list of jobs available that went unfilled, and one employer offering a specific job?

Joe Harrington: Need to know which employer is offering the job, because some employees have had problems there (discharged, no rehire, etc.).

Ed Chilenski: Their union may have a list of jobs, but doesn't necessarily mean anyone is hiring at that time.

John Morrish: What if an actual job exists—10 jobs are unfilled and six Book I's are drawing benefits.

Chuck Gotcher: Comparing apples and oranges—the individuals may not have the skills that match those jobs. Need to know the job requirements.

Dan Sexton: There absolutely should be a specific job in question. Shouldn't just be able to say there were jobs available. Need to relate specific job to specific person.

Janet Lewis: An employer should have specific legitimate reasons for not hiring people. If the member meets the specific skills, why are they turned down? Employer doing so shouldn't be able to disqualify them from benefits.

Grant Alexander: This is a good tradeoff.

Chris Winters: The suitable work factors in the law—customary work, skills—must be considered. If they don't know what job the employer has available, they don't know who to send. Need to be able to match employee to the job to meet needs.

Clark Gilman: Use questionnaire already developed (attached to circular).

John Morrish: NECA did this for a year, then department told them they didn't have standing.

Dick King: Is refusing to bid the same as refusing the job?

Annette: Whatever hiring hall practice is. Individuals should only have to comply with hiring hall requirements. In concept paper; do you like that idea?

Grant Alexander: (to John Morrish) Are NECA and IBEW #46 negotiating a contract?

John Morrish: No.

Robert Blum: Gets few complaints from contractors they deal with. Also have to consider individual's physical fitness when referring to job (18-inch hole and 350 lb. worker).

Wayne Herrington: Employers can say no smokers allowed. Double standard if smoker refuses non-smoking site.

Chris Winters: Need to consider physical fitness; some people can decline jobs at smoking sites.

Tom Harris: Why are we here if policy works well overall, and only problems involve one local and one employer association?

Juanita: Problem is that issue is now in court. Although it works well, policy not binding on anyone except adjudicators who write first level decisions. We don't know what standard Appeals will use. Could interpret differently than department. Who decides what the program will look like—the courts or stakeholders through the rule-making process?

John Morrish: We're here because after June 1998, ESD stopped processing of NECA challenges for 30 days. Then issued a supplement asking them to provide detailed information. NECA provided this info, then department said NECA is not an interested party. Department changed rules of the game four times without complying with APA. Never gave information to NECA as to what they have to provide to department. NECA was not allowed to challenge fraud.

(Break)

Following the break, attendees were called on individually and asked for their input.

Chris Winters: We have a system in place that works. Ask the halls for their procedures, put them on a database, then if a question is raised the department can check to see if the requirements were met.

John Morrish: Agrees, if department goes back to circular 3-94. *(NOTE: John called in on 6/8 to make sure we knew he didn't mean to include supplement 2.)*

Ed Taylor: Given the nature of their business, they see no need to change. Employers they work with are used to the people on their list. This problem doesn't affect all of us.

Earl Liss: Works as dispatcher, believes they address availability okay. As long as member is in telephone contact with hall and available to work, they have no reason to terminate them. Thinks ESD may have fumbled ball, and IBEW and NECA should work this out.

Jeff Smith: Leave policy alone, it works fine as is. There are differences between IBEW locals; theirs has had no problems.

Richard King: Wait until after the court case is resolved.

Ed Chilenski: Program has worked for years. If an individual is in question, look at him, don't revamp the whole system.

John Burnett: Referral halls work well. For an employer to complain, should have a job to offer, and the offer needs to describe the skills needed.

Chuck Gotcher: Referral halls work well. They work with their employers so they keep an eye on individuals. A person's union benefits depend on their working; if they don't, not eligible. The employer's role is to provide jobs. Recommends making the existing policy the rule.

Ron Forest: Agree; why change what works.

Gary Porter: Department agrees that union members have fewer/shorter claims. The system works. Why penalize all for a local dispute?

Ed Eixenberger: Likes the current system. Doesn't want a group or association to second-guess the eligibility of workers.

Mark Martinez: Our system works. Nature of construction industry is that sometimes things are busy and sometimes not. Need UI for times when things are slow, or won't be able to retain trained workforce. Some employees abuse the

system, and some employers abuse the system. Vast majority follow the rules. Don't fix what isn't broken.

Casey Casebier: System works well; leave as is.

Janet Lewis: Opposed to concept paper as written. Sets an arbitrary "cause for doubting" standard. Simple fact that Book II referred when Book I person drawing benefits isn't enough, when don't know nature of job in question. Doesn't want department to interfere with referral hall. Sees this as part of overall movement (not by department) to weaken the referral halls. Hold off on rules until court decides.

Grant Alexander: Opposed to changes until court process has run its course. Asks that no action be taken.

Tom Harris: This has not been an issue in their industry.

Joe Harrington: Need to define what we mean by "senior person" in concept paper.

Paul Harris: Agrees that system works. Challenges to eligibility need to be from an individual, not an association.

David Bunnell: Agrees. Employers should realize UI is a cost of doing business. Don't change how work search is done now.

Robert Blum: Contractors are provided a service by the union halls. If people can't draw UI during downtimes, halls won't be there when employers need workers.

Wayne Herrington: No need for changes.

Dan Sexton: System works perfectly 99.99% of time. Problems are worked out in hiring halls. Rules should reflect this. Strike everything in concept paper from II on down and make this the rule.

Mike Grunwald: This looks like a knee jerk reaction to one small employer group in Seattle. No other employers are represented here. IBEW isn't giving in to them. Department shouldn't give in to bullying tactics of one employer group.

Juanita (Next steps): Two more meetings, then 6/22 UIAC meeting. Will take all input, decide if rules are needed and, if so, what they should say. Will bring draft out for further comment in public meetings. August at earliest.

Annette: Thanks for coming, etc.

Adjourned 11:10 a.m.